

#### **2.E.4. Preliminary Proceeding**

After reviewing the file as above, the summary court officer shall conduct a preliminary proceeding with the accused as described in RCM 1304(b)(1). [See, Appendix 9, MCM.] After giving the accused a reasonable period of time to consider his or her right to refuse trial by SCM, the summary court officer shall record the accused's response. If the accused rejects trial by SCM, the papers shall be returned to the convening authority with no further action.

#### **2.E.5. Trial**

a. After completing the preliminary proceeding and obtaining the consent of the accused to trial by summary court-martial, the trial should proceed as per RCM 1304(b)(2). Enclosure (21b) contains a guide for the proceeding that should be followed. Enclosures (21c) and (21d) are a blank and sample Record of Trial by Summary Court-Martial, Form DD-2329, to be used by the summary court officer.

b. A reservist may be tried by summary court-martial either while on active or inactive duty training. A reservist, not on active duty, may be ordered to active duty for trial by SCM. A summary court-martial conducted during inactive duty training may be in session only during normal periods of such training. A period of inactive duty training shall not be scheduled solely for the purpose of conducting a SCM.

### **2.F. SCM PUNISHMENTS**

#### **2.F.1. Maximum Punishments**

a. The following maximum punishment that may be adjudged at a SCM on an E-4 or below [see, subparagraph 2.F.2 below.]:

- (1) One month confinement
- (2) Forty-five days hard labor without confinement;
- (3) Two months restriction;
- (4) Forfeiture of  $\frac{2}{3}$  of one month's pay, or a fine not exceeding the amount of  $\frac{2}{3}$  of one month's pay, or both fine and forfeiture but the combination not to exceed  $\frac{2}{3}$  of one month's pay;
- (5) Reduction to the lowest pay grade; and
- (6) Reprimand.

b. The following maximum punishment that may be adjudged at a SCM on an E-5 or above:

- (1) Two months restriction;

- (2) Forfeiture of 2/3 of one month's pay, or a fine not exceeding the amount of 2/3 of one month's pay, or both fine and forfeiture but the combination not to exceed 2/3 of one month's pay;
- (3) Reduction to the next inferior pay grade; and
- (4) Reprimand.

**2.F.2. Limitations on Punishment**

a. The maximum forfeiture of pay, and the maximum reduction in pay grade may be adjudged, regardless of whether any other punishment is adjudged.

b. A sentence imposed upon enlisted members above the pay grade of E-4 may not include confinement, hard labor without confinement, or reduction in grade except to the next inferior grade. This includes an E-5 who is reduced by the summary court-martial to E-4. [See, RCM 1301(d)(2).]

c. Confinement on bread and water or diminished rations is not authorized in the Coast Guard.

d. The forfeiture of pay, fine, or combination of forfeiture and fine may not exceed two-thirds of one month's pay (total). A forfeiture may be allocated to occur over a two-month period. A forfeiture or fine shall be recorded in the exact whole dollar amount. A forfeiture will also be recorded in the amount to be forfeited each month, followed by the number of months the forfeiture will last. [See, RCM 1003(b)(2).]

e. A fine may only be adjudged in an amount equal to or less than the maximum forfeiture that could have been adjudged and should normally only be adjudged when the offense committed resulted in unjust enrichment to the accused.

f. If a reduction in pay grade is adjudged along with a forfeiture or fine, the maximum amount of the forfeiture, fine, or both shall be based upon the pay grade to which the accused is reduced.

g. A sentence that includes restriction and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum limit for each. (For example: 60 days restriction and 45 days hard labor without confinement would be a proper combination of the two punishments.) The combined punishments shall be served concurrently, unless otherwise suspended or deferred.

h. A sentence that includes a combination of confinement and restriction may be imposed as an appropriate sentence so long as it does not exceed the maximum amount of confinement authorized. Restriction can be substituted for confinement at the rate of 2 days restriction for each day of confinement. (For example: 15 days confinement and 30 days restriction would be a proper combination of the two punishments.) The combined punishments shall be served consecutively, unless otherwise suspended or deferred.

i. A sentence that includes confinement and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum amount of confinement authorized. Hard labor without confinement can be substituted for confinement at the rate of 1 1/2 days hard labor without confinement for each day of confinement. (For example: 16 days confinement and 21 days hard labor without confinement would be a proper combination of the two punishments.) The combined punishments shall be served consecutively, unless otherwise suspended or deferred.

j. Records of nonjudicial punishments and prior SCM are not "convictions" and shall not be noted as convictions in the record of trial. If obtained from the accused's personnel records and properly introduced in evidence, records of nonjudicial punishment and prior SCM may be considered as evidence of the accused's prior military service.

k. No confinement or restriction may be imposed on a reservist tried by summary court-martial conducted during inactive duty training, or active duty pursuant to an order unless the order was approved by Commandant (G-WTR). Forfeitures imposed on a reservist at a SCM may be collected from pay received during subsequent periods of service whether active or inactive duty.

## **2.G. SCM POST TRIAL MATTERS**

### **2.G.1. Record of Trial [ROT]**

The record of trial [ROT] shall be prepared in accordance with RCM 1305 and Appendix 15, MCM.

a. In cases where a plea of not guilty has been entered for one or more specifications of which the accused is found guilty, the ROT shall contain a summary of all evidence received at trial used to prove each element of any offense of which the accused was found guilty. A summary of evidence considered during sentencing is not required.

b. The convening order, if any, the charge sheet and all documentary evidence shall also be attached to the ROT. Photographs of physical evidence should be obtained and attached to the ROT.

### **2.G.2. Forwarding of ROT**

After a copy is given to the accused, the original and two copies shall be forwarded to the convening authority, except as noted in subparagraph 2.G.2.b below.

a. The accused may submit matters per RCM 1105 within 7 days after the sentence is announced. The convening authority may extend this period by 20 days for good cause.